

Serial No. 10/015,935

Docket No.: KCC-16,727

REMARKS

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1-54 are pending, with Claims 3-5, 7, 40 and 46-54 withdrawn from consideration.

With this Amendment, Claims 1, 13 and 38 have been amended and Claims 14-37 have been canceled.

Amendment to the Claims

Claims 1, 2, 6, 8-13, 38, 39 and 41-45 have been rejected, with no claims being allowed. Claims 1, 13 and 38 have been amended. Claims 14-37 have been canceled. Applicants respectfully believe these amendments overcome the Examiner's claim objections.

Applicants have amended Claims 1 and 38 to include the limitation of at least the front or back side panels being permanently bonded to and extending transversely beyond an associated linear side edge of an outermost layer of the absorbent composite structure. Support for this amendment is provided at page 18, lines 1-14, of the specification, as well as in Fig. 3.

Also, as suggested by the Examiner on page 1 of the Office Action, Claims 13 and 38 have been amended to replace the phrase "abuts each waist end edge" with --of each of the at least front side panels or at least back side panels abuts the waist end edge of the associated side panel--.

No new matter has been added by this Amendment. No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims also remains unchanged.

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Claim Rejections - 35 U.S.C. §102

The rejection of Claims 1-2, 6, 8-13, 38, 39 and 41-45 under 35 U.S.C. §102(b) as being anticipated by Van Gompel et al. (EP 0 743 052 A2) is respectfully traversed.

Van Gompel et al. disclose a disposable three-dimensional garment having a *full outer cover*.

For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Van Gompel et al. do not disclose each and every element or limitation of currently amended Claims 1 and 38.

In the current Office Action, the Examiner notes on page 4 of the Office Action that "the claims do not require the panels extend from the side edges of the outermost layer of the garment which also forms the cover of the composite." The Examiner also makes a similar statement on page 8 of the Office Action. Applicants have amended independent Claims 1 and 38 to require the panels to be bonded to and extending transversely beyond a linear side edge of an outermost layer of the absorbent composite structure.

Van Gompel et al. do not disclose side panels that include targeted elastic material (TEM), nor do Van Gompel et al. disclose or suggest side panels that are permanently bonded to and extend transversely beyond a linear side edge of an outermost layer of an absorbent composite structure. Instead, in Van Gompel et al., the outer cover fully encompasses the garment (Abstract; Col. 2, lines 1-3; Col. 4, lines 1-3, and Fig. 7). Thus, no side panels or portions of side panels extend transversely beyond a linear side edge of the outer cover in the garment of Van Gompel et al.

Also recognized by the Examiner, Applicants have defined the term "targeted elastic material" ("TEM") at page 9, lines 8-14. More particularly, TEM is a single elastic material or laminate having targeted elastic regions. TEM's include only materials or laminates which are made in a single manufacturing process, and which are capable of exhibiting targeted elastic properties without requiring an added elastic band or layer in the targeted elastic region. TEM's do not include materials

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having elasticized regions achieved through separate manufacture of an elastic band, and subsequent connection of the elastic band to the underlying material.

The manufacturing process described in Van Gompel et al. and cited (on page 4 of the Office Action) by the Examiner at Col. 7, lines 32-54, recites separate manufacture of an elastic band, and subsequent connection of the elastic band to the underlying material. Although the elastic band is not activated at the time of attachment, the elastic band is, nevertheless, applied to the underlying material subsequent to manufacture. As described by Van Gompel et al., the stretchable side members do not include targeted elastic material because the stretchable side members require more than a single manufacturing step to create the stretchable side members. More particularly, the stretchable side members require the separate steps of (1) combining the nonwoven layer and the heat-shrinkable layer, (2) incorporating the combined layers into a garment, and (3) thermally bonding the garment to activate the heat-shrinkable layer. Thus, Van Gompel et al. fail to disclose a targeted elastic material.

The Examiner suggests (on pages 8-9 of the Office Action) that Applicants' methods as set forth in Figures 9-12 and 16 illustrate laminates in which the elastic material is formed and laminated in a single manufacturing line process but the elastic material is actually formed in the line prior to it being attached or connected to an underlying layer. The Examiner's interpretation of these figures is taken out of context with respect to the corresponding description on page 35, lines 6-12, where it is indicated that an extruder (not shown) supplies molten elastomeric material to the die illustrated in the figures. Thus, the elastic strands are formed and applied to the underlying material in a single manufacturing process.

For at least the reasons presented above, Applicants respectfully submit that Claims 1 and 38 are not anticipated by Van Gompel et al. Because Claims 2, 6, 8-13 and 38-39, and 41-45 depend from Claims 1 or 38, these claims are also not anticipated by Van Gompel et al. Thus, Applicants respectfully request withdrawal of this rejection.

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Double Patenting Rejections**A. U.S. Application No. 09/855,188**

The provisional rejection of Claims 1-2, 6, 8-13, 38-39 and 41-45 under the judicially created doctrine of obviousness-type double patenting over claims 1-19, 21, 50-59 of copending U.S. Application No. 09/855,188 in view of Van Gompel et al. (EP 0 743 052) and Bunnelle et al. (U.S. Patent No. 4,418,123) is respectfully traversed.

The present application and U.S. Application No. 09/855,188 are pending. Allowable subject matter, notwithstanding the provisional obviousness-type double patenting rejection, has not been indicated in either of these applications. Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is made between two or more applications, M.P.E.P. §804(I)(B) states that "[i]f the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent." It is not evident which of the pending applications will become allowable first. Therefore, any action by Applicants with regard to this provisional rejection is premature.

B. U.S. Application No. 09/855,189

The provisional rejection of Claims 1-2, 6, 8-13, 38-39 and 41-45 under the judicially created doctrine of obviousness-type double patenting over claims 1-24 and 49-58 of copending U.S. Application No. 09/855,189 in view of Van Gompel et al. (EP 0 743 052) and Bunnelle et al. (U.S. Patent No. 4,418,123) is respectfully traversed in view of the Terminal Disclaimer filed herewith.

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Conclusion

The Examiner has indicated on pages 9-10 of the Office Action that the prior art made of record and not relied upon is considered pertinent to Applicants' disclosure, citing Bridges (U.S. Patent No. 5,236,430), Popp et al. (U.S. Patent No. 5,895,382), Mishima et al. (U.S. Patent No. 6,197,012), Hilston et al. (U.S. Patent No. 6,221,483), and Bunnelle et al. (U.S. Patent No. 4,418,123). The Examiner also cites a "Mleziva et al. '024" reference, already of record. However, Applicants are not aware of such a reference that is already of record.

In addition to being monolithically formed rather than integral, the side panels recited in Applicants' claimed disposable garments also comprise a targeted elastic material. None of these five references of record, alone or in any combination, discloses or suggests a disposable garment having side panels that are monolithically formed and comprise the targeted elastic material recited in Applicants' Claim 1 and 38.

Applicants believe that this case is now in condition for allowance. If the Examiner feels that any issues remain, then Applicants' undersigned attorney would like to discuss the case with the Examiner. The undersigned can be reached at (847) 490-1400.

Respectfully submitted,



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Attachment